

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2244 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GOVIND VIRABHAI

Versus

MANAGER

Appearance:

MR AG VYAS for Petitioner

MR DD VYAS for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 27/08/1999

ORAL JUDGEMENT

The only question which requires consideration and adjudication in this petition under Article 227 of the Constitution of India is, as to whether the rejection of reference recorded by the Chief Judge, Labour Court, Rajkot on 28.11.85 in Reference (LCR) No.844/81, is just and reasonable or not ?

Since there was an industrial dispute between the Manager of the respondent factory and the petitioner-workman, the

Assistant Commissioner of Labour, Bhavnagar by his order dated 12.8.81 made reference to the Chief Judge, Labour Court, at Rajkot as to whether the petitioner is entitled to be reinstated in service of the respondent Company or not, which came to be rejected upon analysis of the facts and evaluation of the relevant proposition of law. Hence this petition.

The petitioner was employed as workman (fireman) in the Boiler department of the respondent factory. The case of the workman was that he was working for more than 30 years prior to the date of termination of service on 1.11.80. He, inter alia, contended that his termination order came to be passed without notice and without payment of notice period and other dues and, therefore, the termination of service was illegal and contrary to the provisions of section 25F of the Industrial Disputes Act, 1947.

In the reference, the respondent authority denied the allegations of the petitioner. According to the respondent, the petitioner was working as a seasonal worker in Ginning Factory and the said factory was working only in season every year. Therefore, upon the expiry of the season, the services of the petitioner were terminated by making payment of dues.

Before the Reference Court, the workmen had filed his statement of claim at Ex.4 and the respondent Company had also filed written statement at Ex.6. Therein also the same defence was raised by the Company that like many other workers, the petitioner was also a seasonal worker engaged in Ginning Factory. The petitioner used to be discharged upon expiry of the season every year. Lastly, when the working of the factory was restarted on 31.11.80, the petitioner was informed that he should join his duties. However, he did not join the service as he was working elsewhere.

The workman gave evidence at Ex.3. The following persons were examined on behalf of the Company:

1. Shri Panlal Tribhovandas Mehta (Ex.16).
2. Shri Navalsinh Harbhamji (Ex.91)
3. Shri Himatsinh Nanubha Jadeja (Ex.92)

It is very clear from the evidence of the workman that he was relieved from service in 1980 and thereafter he got service in Khodiyar Industries for two months. One Shri Panlal Tribhovandas Mehta, who was an accountant at the relevant time in the respondent Company has stated in his

evidence that the petitioner, though informed to join duty, did not turn up for work after the season when the factory was restarted. He further stated in his evidence that he (Shri Mehta) along with one Peon personally gone to the place of workman two-three days before the factory was to re-start, but the workmen did not come for work. The evidence of Navalsinh who was the Chokidar of the factory, is also on the same line. Witness Shri Himatsinh Jadeja was working in Khodiyar Press and as per his evidence the petitioner worked in Khodiyar Industries from 7.10.80 to 5.1.81. Thus, it is clear that the workman was already serving in Khodiyar Industries and inspite of being called to join the factory, he did not go for work. As such, the workman had joined the work of the respondent's factory in season two years prior to the date of the impugned discharge from service.

In the light of the aforesaid facts and circumstances and the documentary evidence, it is clear that the respondent company was a seasonal one and the petitioner workman was engaged for seasonal work only and when the season of work for 1980-81 was commenced, the workman was working somewhere else and he was called to work in the factory, but he refused to join. So out of free volition and will he did not join the factory of the respondent.

In the light of the aforesaid facts and circumstances, the conclusion of the Labour Court that the petitioner was not entitled to be reinstated in the seasonal work of the factory of the respondent is quite justified. Therefore, there is no substance in the present petition. Again the role and the jurisdictional sweep of a writ Court exercising supervisory power under Article 227 of the Constitution of India is very much circumscribed.

In the result, the petition must fail. Accordingly, it is dismissed. Rule discharged. No order as to costs.

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(vjn)